IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 10, 2008 Session

# CITY OF LAKEWOOD ET AL. v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

**Appeal from the Chancery Court for Davidson County**
**No. 05-1425-I Claudia Bonnyman, Chancellor**

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**No. M2007-01021-COA-R3-CV - Filed December 22, 2008**

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Six cities within Davidson County sued the Metropolitan Government claiming they were discriminated against in the provision of services in violation of Metropolitan Charter § 18.15. The chancellor held that the matter was nonjusticiable. Two cities appealed. We reverse the chancellor's order and, in the interest of judicial economy, determine the meaning of § 18.15.

**Tenn R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded**

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

Jonathan Harwell, D. Alexander Fardon, and D. Matthew Foster, Nashville, Tennessee, for the appellant, City of Forest Hills.

James Blumstein, Nashville, Tennessee, Special Counsel for City of Forest Hills.

Joe M. Haynes, Goodlettsville, Tennessee, for the appellant, City of Goodlettsville.

Lora Barkenbus Fox, Kevin Klein, Kathryn Evans, James W. J. Farrar, Paul J. Campbell, and Matthew J. Sweeney, Nashville, Tennessee, for the appellee, Metropolitan Government of Nashville and Davidson County, Tennessee.

## OPINION

The Metropolitan Charter of Nashville and Davidson County consolidated the governmental and corporate functions previously exercised by the City of Nashville and the County of Davidson

into a single metropolitan government.[1] The Metropolitan Charter ("Metro Charter") is the governing document of this consolidated government.[2] A key question that must be addressed in any such charter formed pursuant to state law is how the new consolidated government will deal with the other, smaller cities within the county. Section 18.15 of the Metropolitan Charter addresses this important issue. In pertinent part, Section 18.15 states:

> Any city in Davidson County not abolished by this Charter shall continue to exist and to function the same as prior to adoption of the Charter; except, that no such city shall extend its boundaries by annexation of any area of the metropolitan government. Any such smaller city may contract with the metropolitan government for the administration and handling of any of its governmental functions by the metropolitan government . . . .
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> It shall be the obligation of the metropolitan government to furnish Smaller Cities with governmental services so that such cities will be furnished with governmental services to no lesser extent than other areas outside the urban services district. In furnishing said services, the metropolitan government may take into consideration the governmental services available to the smaller city by use of state aid and other distributable moneys not derived from local taxation by the smaller city; and in this respect the metropolitan government may contract with the smaller city as to the handling, use and expenditure of such moneys.

The cities of Lakewood, Goodlettsville, Belle Meade, Berry Hill, Forest Hills, and Oak Hill existed before the adoption of the Metropolitan Charter and continue to exist today.

The City of Lakewood filed this action against the Metropolitan Government of Nashville and Davidson County ("Metro") seeking a declaration of Metro's obligations under Section 18.15. The five other smaller cities were permitted to intervene as plaintiffs and filed complaints. Each asserted that Metro was obligated to provide services to the smaller cities to the same extent as it did to other areas of Davidson County outside the urban services district.[3] Metro moved to dismiss the complaints. The trial court denied the motion to dismiss as to the declaratory judgment aspect of the complaints but granted the motion to dismiss as to the causes of action asserting that the smaller cities were entitled to a pro rata share of Metro taxes, stating that the smaller cities could seek a pro

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[1]The consolidation of city and county governments was permitted by a 1953 amendment to the Tennessee Constitution, Art. XI, Sec. 9. In 1957, the General Assembly enacted Tenn. Code Ann. § 7-1-101, *et seq*. (originally Tenn. Code Ann. § 6-3701, *et seq*.) to implement the constitutional provision. Cities and counties wishing to consolidate must follow the provisions of these statutes.

[2]Of course, the Metropolitan government is subject to constitutional and state and federal law constraints as well.

[3]The Metropolitan Charter § 1.03 creates two service districts, a general services district which includes all of Davidson County and an urban services district which initially was co-terminous with the City of Nashville.

rata share as a remedy. Metro then answered the complaints and filed counterclaims for a declaratory judgment as to its obligations to the smaller cities.

The smaller cities moved for partial summary judgment as to Metro's obligations under § 18.15. Metro filed a cross-motion for partial summary judgment. After a hearing, the trial court declined to exercise jurisdiction on the basis that the matter presented was nonjusticiable. The cities of Forest Hills and Goodlettsville appealed to this court, maintaining that the chancellor erred in determining this matter was nonjusticiable.

## Standard of Review

The Tennessee Supreme Court has stated: "A decision on whether to entertain a declaratory judgment falls squarely within a trial court's discretion, which has been described by this Court as 'very wide.'" *State v. Brown & Williamson Tobacco Corp*., 18 S.W.3d 186, 193 (Tenn. 2000) (quoting *Southern Fire & Cas. Co. v. Cooper*, 292 S.W.2d 177, 178 (Tenn. 1956)). It has been said that, "on appeal where the chancellor has exercised the proper discretion this discretion will not be disturbed." *Southern Ry. Co. v. Atlantic Coast Line R. Co.,* 352 S.W.2d 217, 219 (Tenn. 1961). The term "proper discretion" means, in this context, "a sound discretion, exercised, not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances of the law, and directed by the Chancellor's reason and conscience to a just result." *Id*. Thus, Tennessee case law consistently indicates that a trial court's decision not to exercise jurisdiction in a declaratory judgment action cannot be arbitrary. *Brown & Williamson*, 18 S.W.3d at 193; *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948, 954 (Tenn. 1998); *Huntsville Util. Dist. v. General Trust Co.*, 839 S.W.2d 397, 400 (Tenn. Ct. App. 1992).

## Analysis

In order to determine whether the chancellor's decision was arbitrary, we must examine the pleadings, any other pertinent facts in the record and, of course, the chancellor's decision. Since the cities of Forest Hills and Goodlettsville are the only cities to appeal the chancellor's decision, we need only examine their pleadings and supporting facts, as well as Metro's.

Goodlettsville's complaint cited Metro Charter § 18.15 and alleged that Metro should remit some or all of the taxes collected in Goodlettsville to assist the city in providing services. Implicit in Goodlettsville's complaint is the view that the city does not receive the amount of services from Metro that it should under the Metro Charter.

Forest Hills also cited Metro Charter § 18.15 in its First Amended Complaint and alleged tax revenues paid by residents of Forest Hills should be used to fund Forest Hills' services. Forest Hills, however, went further than Goodlettsville, and specifically alleged:

> that it is being illegally discriminated against by Metro in terms of police protection, maintenance of its streets and roads, the regulation and control of vehicular traffic

> and the unlawful speed of motorists on its streets and roads, provisions for stormwater management and compliance with federal and state environmental laws regulating stormwater, the usurpation of fees for telecommunication services and franchise fees within Forest Hills and upon its rights-of-way and the general welfare of its residents and citizens.

The complaint attached an affidavit from the City Manager of Forest Hills, Mr. Jim Pitman, in support of its allegations of illegal discrimination. The affidavit states that "Metro has refused to contribute to or participate in storm water maintenance and compliance within the jurisdiction of the city of Forest Hills," "the amount of the Metro distribution to Forest Hills for road maintenance is less than Metro spends per mile on road maintenance in other areas of the General Services District," and "Metro has failed to provide the necessary control and surveillance of the roads in Forest Hills to properly regulate traffic and the speed of motorists within Forest Hills' city limits."

Metro filed a Motion to Dismiss each plaintiff city, including Forest Hills and Goodlettsville. The chancellor ruled: "The Court denies the motions to dismiss in part because the Smaller Cities state a claim for a declaratory judgment to determine what Metropolitan Charter § 18.15 requires of the Smaller Cities and the Metropolitan Government." Furthermore, the chancellor held: "Except for Forest Hills, the complaints state that it is unlawful for Metro to withhold tax revenues collected from the Small Cities. As to this cause of action, the motion to dismiss is granted because the facts asserted and taken as true, do not state a claim." The order did indicate that the smaller cities may seek the tax revenues as a remedy.

After the trial court's ruling on Metro's motions to dismiss, the focus of the case narrowed to the interpretation of Metro Charter § 18.15. Metro's answer contained a declaratory judgment counterclaim on the meaning of § 18.15. Forest Hills and Goodlettsville both answered disputing the interpretation of § 18.15 put forth in Metro's counterclaim. Soon thereafter, Forest Hills filed a Motion for Partial Summary Judgment seeking a determination by the trial court of the meaning of § 18.15. Goodlettsville did so as well. Metro filed a Cross-Motion for Partial Summary Judgment on the same issue.

The chancellor's order on the motions stated: "The Court declines to exercise jurisdiction over this declaratory judgment action for the reasons stated in the attached transcript and the order incorporates the bench ruling attached hereto." In the chancellor's thoughtful bench ruling, she observed, "there is no actual, no sharp or even soft controversy that the Court can decide without stepping into the policy-making role that is the power of the legislature." Thus, she was of the opinion that there was no controversy to resolve judicially: "[T]he Court finds that what the Smaller Cities need in this case is an advisory opinion...." The chancellor was clearly concerned about violating the separation of powers, indicating that she believed the court was being asked to exercise legislative authority, that is, to involve the court in the Metro funding process. The chancellor looked beyond the "purely legal questions" presented by the motions and "went back and looked at the complaints to see . . . what is the lawsuit about?" She found that "the question presented and the

relief sought are of the type that do not admit a judicial solution...." Therefore, the chancellor ruled that the matter was nonjusticiable.

What is this case about? Even at oral argument, the parties did not agree. Counsel for Forest Hills[4] maintained:

> the dispute in the case was over what the parties call the 'offset provision' in § 18.15. . . . Metro uses that offset provision to justify reducing the GSD [General Services District] services it provides to a smaller city based on the mere existence of funds that that smaller city receives other than by taxing its own residents and the smaller cities' position was that under the plain language of that offset provision, Metro's ability to reduce the services it provides to the smaller cities is not triggered by the mere existence of these outside funds, but rather by the use of those funds in the discretion of the smaller city to provide GSD type services to its own residents.

Counsel for Metro disagreed with Forest Hills' characterization of the issue, arguing that the case is much broader than the offset provision.

After examining the pleadings, the record, the chancellor's decision and the arguments of counsel, we have concluded that both parties are correct. It appears that there are two main issues in this case — (1) what is required of Metro under § 18.15 of the Metro Charter and (2) if Metro is violating § 18.15, what is to be done about it. The chancellor's opinion and Metro's counsel focus on the latter question, while Forest Hills and Goodlettsville focus on the former. In our opinion, the chancellor and Metro have "put the cart before the horse" and concerned themselves with issues that may never require the court's consideration. The cities' claims to a portion of the taxes raised within their limits depend on how Metro Charter § 18.15 is interpreted. In our view, the chancellor was correct in narrowing the focus of the case to the meaning of § 18.15 and relegating the claims for a portion of the taxes to consideration as a remedy once the meaning of § 18.15 is determined.[5]

Is the meaning of Metro Charter § 18.15 nonjusticiable? The concept of justiciability deals with the appropriateness of a matter for adjudication by a court. The chancellor relied on the separation of powers as justification for declining to adjudicate the matter under the Declaratory Judgment Act. She was appropriately concerned about stepping into a policy-making role and exercising a legislative function regarding Metro's funding process. This concern falls into the political question category of justiciability, a subject which the Tennessee Supreme Court has recently discussed in *Bredesen v. Tennessee Judicial Selection Comm'n*, 214 S.W.3d 419 (Tenn.

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[4]Counsel for Goodlettsville adopted the arguments put forth by counsel for Forest Hills.

[5]The chancellor's previous ruling on the motions to dismiss determined that the cities' claim that it is unlawful for Metro to withhold tax revenues collected from the small cities was without merit: "[a]s to this cause of action, the motion to dismiss is granted because the facts asserted and taken as true, do not state a claim." It appears that the chancellor's subsequent order revisited the entire matter since the chancellor "went back and looked at the complaints to see . . . What is the lawsuit about?" Only then was the order issued that determined the case was nonjusticiable.

2007). The court quoted with approval the following language from the United States Supreme Court decision in *Baker v. Carr*, 369 U.S. 186 (1962), concerning what makes a case nonjusticiable:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

*Bredesen*, 214 S.W.3d at 435 (quoting *Baker*, 369 U.S. at 217); *see also Mayhew v. Wilder*, 46 S.W.3d 760, 773 (Tenn. Ct. App. 2001).

In this matter, there is no "textually demonstrable constitutional commitment of the issue to a coordinate political department," rather, the interpretation of laws is a matter for the courts. As the Tennessee Supreme Court noted long ago in *Richardson v. Young*, 125 S.W. 664, 668 (Tenn. 1910), "[t]heoretically, the legislative power is the authority to make, order, and repeal, the executive, that to administer and enforce, and the judicial, that to interpret and apply, laws." Neither is there "a lack of judicially discoverable and manageable standards for resolving" the issue. Over the many years of judicial interpretation of laws, the courts have developed a plethora of rules and methods for determining their meaning. In our opinion, none of the other *Baker v. Carr* factors exist in this case as far as interpreting the Metro Charter is concerned. Therefore, it is our opinion that the chancellor erred in determining that the meaning of Metro Charter § 18.15 was nonjusticiable.

There still remains the issue of the chancellor's "very wide" discretion to decline to entertain a declaratory judgment. *Brown & Williamson*, 18 S.W.3d at 193. The purpose of the Declaratory Judgment Act is " to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations . . . ." Tenn. Code Ann. § 29-14-113. Of course, a justiciable controversy must exist, *Brown & Williamson*, 18 S.W.3d at 193, and we are satisfied that this requirement is met. Is it "right and equitable under the circumstances of the law," *Southern Ry. Co.,* 352 S.W.2d at 219, to decline to determine the meaning of the specific provision of the Metro Charter that is at issue here? We think not, as long as it arises in the context of an actual dispute with real consequences. It is the sort of question courts are commonly called upon to resolve.[6] A concern that answering the interpretation question may lead to other questions which may not be justiciable is not, in our opinion, a justification for declining to address the meaning of § 18.15.

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[6] We note that the Court of Appeals has interpreted § 18.15 at least twice before. *See City of Oak Hill v. AAMP*, No. M2001-00688-COA-R3-CV, 2002 WL 31769086, *3, 6 (Tenn. Ct. App. Dec. 11, 2002); *State ex rel. Metropolitan Gov't of Nashville and Davidson County v. Spicewood Creek Watershed District*, No. 01-A-019106CH00203, 1991 WL 228951, *2 (Tenn. Ct. App. Nov. 8, 1991), *rev'd* 848 S.W.2d 60 (Tenn. 1993).

Having determined that the chancellor erred in declining to exercise jurisdiction, we can either remand the substantive issue to the trial court or we can rule on the issue ourselves. The meaning of Metro Charter § 18.15 is ready for determination. The parties filed extensive briefs with the chancellor, which are in the record.[7] Tenn. R. App. P. 13(b) allows the appellate court, in its discretion, to consider issues not presented for review in order to prevent needless litigation. Tenn. R. App. P. 36(a) allows the Court of Appeals to "grant any relief, including the giving of any judgment and making of any order; provided, however, relief may not be granted in contravention of the province of the trier of fact." The meaning of Metro Charter § 18.15 is purely a question of law, so a decision on the provision's meaning will not invade the province of the chancellor as the trier of fact. In the interest of judicial economy, we have decided to proceed with a determination of the meaning of Metro Charter § 18.15 as raised by the arguments of the parties.

The search for the meaning of any writing begins with the words used. In this case, we begin the determination of the meaning of Metro Charter § 18.15 by looking at the words of the section and giving effect to their natural and ordinary meaning. *Hargrove v. Metro. Gov't of Nashville and Davidson County*, 154 S.W.3d 565, 568 (Tenn. Ct. App. 2004). If the words are unambiguous, the courts enforce the language as written. *Id*. The pertinent language of § 18.15 is:

> It shall be the obligation of the metropolitan government to furnish Smaller Cities with governmental services so that such cities will be furnished with governmental services to no lesser extent than other areas outside the urban services district. In furnishing said services, the metropolitan government may take into consideration the governmental services available to the smaller city by use of state aid and other distributable moneys not derived from local taxation by the smaller city . . . .

The first sentence places a duty upon Metro to furnish the smaller cities with governmental services to no lesser extent than it does to other areas of the general services district. As the smaller cities argue, this is something akin to a non-discrimination provision in that it indicates the smaller cities are to be furnished government services just as are other areas of the GSD.

The second sentence modifies the first by further defining the duty of non-discrimination to allow Metro to "take into account" such services "available" to the smaller cities "by use of state aid and other distributable moneys," excluding local taxation. The parties differ as to the meaning of "available to the smaller city by use." The smaller cities maintain that these words mean that the state aid and other moneys are available for Metro's consideration only if actually used by the smaller city for GSD services. Metro contends that the funds are available for consideration even

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[7] Forest Hills' Memorandum of Law in support of its motion for partial summary judgment is not in the record, but its detailed response to Metro's motion for partial summary judgment and the record as a whole make its arguments clear.

if the smaller city does not choose to use the state aid and other moneys for GSD services because the city could have chosen to use the moneys for GSD services. In other words, Metro argues that § 18.15 does not authorize the smaller cities to use the moneys for whatever they choose and then require Metro to provide GSD services that the smaller cities could have provided.

We find the language of § 18.15 to be unambiguous and agree with Metro's interpretation. In the phrase "available to the smaller city by use," the words "by use" envision the application of the state aid funds to governmental services. However, the smaller cities do not place sufficient emphasis on the word "available." In this context, "available" denotes "accessible for use," or "capable of being obtained." Webster's New Basic Dictionary 51 (2007). Thus, "governmental services available . . . by use of state aid and other distributable moneys" means governmental services which are obtainable using the state aid and other distributable moneys the smaller city receives. The words refer to the ability to use the specified sources of funds for GSD services, not their actual use.

The smaller cities have advanced historical and policy arguments to support their position. While it is technically unnecessary to address these arguments given our view that the language of § 18.15 is unambiguous, *Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d 626, 630 (Tenn. 2008), we choose to offer a few observations in order to ensure that our views are entirely clear.

The smaller cities have placed affidavits of George H. Cate, Jr. and Cecil D. Branstetter in the record. Both gentlemen played significant roles in the adoption of the Metropolitan Charter[8] and have rendered distinguished service to their community in many ways over the years. Since the Branstetter affidavit basically says the Cate affidavit is correct, we will focus on the latter. Initially, we must note that the remarks of a founder of the Metropolitan Charter are of limited value in interpretation, just as a legislator's remarks about a constitutional amendment are less material than remarks on an ordinary bill. *South. Ry v. Fowler*, 497 S.W.2d 891, 895 (Tenn. 1973). This is because the development of the charter, just like a legislatively proposed constitutional amendment, is merely an initial step in a process that results in a vote of the people on the document. It is the intent of the people that matters. *Id.*

Autonomy is a major concern of the smaller cities. They strongly maintain that Metro's interpretation of § 18.15 impairs the smaller cities' abilities to set fiscal priorities. The Cate affidavit maintains that, "No provision in the 1962 Charter was intended to prevent the smaller cities from using their discretion to determine which powers to exercise, which services to provide (or at what

[8]The creation of the Metropolitan Government of Nashville and Davidson County was a bold and innovative move. "Nashville became the national pioneer in Metropolitan organization. Although other cities had partial consolidation, Nashville was the first city in the country to achieve true consolidation." Carole Bucy, *Short History of Metropolitan Government for Nashville-Davidson County*, http://www.library.nashville.org/research/res_nash_history_metrohistory.asp. (Last checked November 18, 2008).

levels), how to allocate resources available to them or how to set priorities for spending their resources." Section 18.15 does not prevent the smaller cities from exercising their discretion as to what services to provide or how to allocate their funds. It is merely a factor that they must consider when deciding on their priorities, given that there are consequences (such as the offset) for using, or not using, their funds in certain ways.

The Cate affidavit goes on to discuss § 18.15, stating that "[i]t was added [to the charter] following that Charter's defeat [in 1958]. It was included to provide assurance that Metro had a legal obligation to provide the smaller cities with services comparable to other areas of the General Service District (GSD)." The affidavit further states that the "take into consideration" sentence:

> was intended to treat Metro fairly by providing it with the discretionary ability to offset against its obligation to provide services to residents of the smaller cities equal to those provided elsewhere in the GSD, when the smaller city used state-shared funds or other distributable moneys because presumably, but for the intervening existence of the independent smaller cities, Metro would have received those funds and would have been able to decide how they could have been allocated.

The first proposition, regarding the purpose of the provision, is consistent with the plain language of the section.[9] Notably, in the second proposition concerning the intent of the "take into consideration" sentence, the Cate affidavit does not say for what purpose the smaller city is to have used the state-shared funds in order to provide Metro with the option to offset. Rather, it states that the offset could be implemented "when the smaller city used state-shared funds." This clearly supports Metro's interpretation in that the availability of the offset is not dependent on the use of the funds by the smaller cities for GSD purposes. The other arguments of the smaller cities have been considered and rejected.

## Conclusion

The chancellor's order finding this matter nonjusticiable is reversed. The case is remanded for any further proceedings consistent with this opinion. This opinion does not prevent the chancellor from determining that other issues arising from this opinion are non-justiciable. Costs

[9] Metro argues that § 18.15 is not a non-discrimination provision in that all streets do not have to be the same. It is, however, a non-discrimination provision in that it mandates that the smaller cities not be treated any differently that the other GSD areas. This does not mean that GSD services must be distributed across the GSD with mathematical exactitude. It means that areas encompassed by the smaller cities are not to be treated differently because they are in smaller cities.

of appeal are assessed one half against the appellee, the Metropolitan Government of Nashville and Davidson County, and one half against the appellants, the cities of Forest Hills and Goodlettsville, for which execution may issue, if necessary.

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ANDY D. BENNETT, JUDGE